

VZCZCXYZ0013
PP RUEHWEB

DE RUEHNR #4239/01 2721440
ZNY CCCCC ZZH
P 291440Z SEP 06
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 4608
INFO RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 8803
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 4865
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 4375
RUEHKM/AMEMBASSY KAMPALA PRIORITY 1581
RUEHLGB/AMEMBASSY KIGALI PRIORITY 4530
RUEHLO/AMEMBASSY LONDON PRIORITY 2015
RUEHFR/AMEMBASSY PARIS PRIORITY 1999
RHMFISS/CJTF HOA PRIORITY
RHMFISS/CDR USCENTCOM MACDILL AFB FL PRIORITY

C O N F I D E N T I A L NAIROBI 004239

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E.O. 12958: DECL: 09/28/2026

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SUBJECT: WHERE'S KABUGA? DIPLOMATS URGE GOVERNMENT TO
INTENSIFY SEARCH

REF: KIGALI 929

Classified By: A/DCM John Hoover for reasons 1.4 (b,d)

11. (C) SUMMARY: International Criminal Tribunal for Rwanda (ICTR) Prosecutor Hussein Bubacar Jallow, joined by like-minded Nairobi-based chiefs of mission, delivered a strong message to the Government of Kenya urging more cooperation in apprehending Rwandan genocidaire Felicien Kabuga. Kenya's Acting Foreign Minister responded positively, agreeing to revive the still-born Kenya-ICTR joint task force to investigate the Kabuga case. Political will on the Kenyan side and greater trust between the ICTR and the Government of Kenya will be needed to maintain the momentum and get the Kabuga investigation on track. END SUMMARY.

Kenya Urged to Step Up Efforts to Find Kabuga

12. (SBU) In the context of recurring media reports that infamous Rwandan genocidaire Felicien Kabuga spends extensive periods of time in Kenya in connection with business interests here, International Criminal Tribunal for Rwanda (ICTR) Prosecutor and U.N. Under Secretary General Hassan Bubacar Jallow visited Kenya September 27-28. Joined by chiefs of mission from the EU, Norway, Rwanda, and Switzerland (with the U.S. signing on but not present due to the Ambassador's travel to Mombasa), Jallow demarched Justice and Constitutional Affairs Minister Martha Karua, Acting Foreign Affairs Minister Moses Wetangula, and Assistant Minister for Provincial Administration Joseph Kahindi. In these meetings, Jallow highlighted Kenya's international obligation to cooperate with the ICTR and urged the government to intensify its efforts to track, arrest, and hand over Kabuga. Participating chiefs of mission further reminded the government that inaction on the issue would damage Kenya's international reputation. Following the meetings, the chiefs of mission issued a press statement, the text of which follows in paragraph 7.

Prosecutor Comes Frustrated, Leaves Less So

13. (C) Prosecutor Jallow left Kenya happier than when he arrived. In a pre-demarche briefing, Jallow told diplomats (including U.S. Mission Legatt) that previous attempts to

secure Kenyan cooperation to find Kabuga had failed. Decrying the Government of Kenya's (GOK) lack of motivation, Jallow noted that in the past when the ICTR had leads, Kabuga was always tipped off and escaped. Jallow said the ICTR and the Kenyan Criminal Investigation Division (CID) had agreed to a joint tracking plan on August 9 (reftel), providing for a Kenyan task force that would be responsible for compiling a report of all available information. The Kenyans had never responded, Jallow said.

¶4. (C) On this visit, too, the GOK reaction was mixed. According to Jallow, Police Commissioner Hussein Ali considers the Kabuga case a distraction from his regular work, while Minister Karua was characteristically combative: "we have a thousand other things we have to get done." It was Acting Foreign Minister Wetangula, however, who was the most encouraging. In a change in the Kenyan position, Wetangula acknowledged that it is possible that Kabuga is in Kenya. He added that Kabuga was protected by officials under the previous government, and some of those people may still support him. Jallow was also pleased that in response to the joint demarche, the GOK recommitted to the joint task force and promised to provide in six weeks a comprehensive report of all of the information Kenyan police have gathered so far. Both sides agreed to meet in the next few days to work out the details of the task force. Jallow noted the possibility of including outside (i.e. non-Kenyan and non-ICTR) members. Jallow said he is scheduled to give a status report on the case to the U.N. Security Council on December 15, and reported that he told the GOK he would not hesitate to finger them for non-cooperation.

Information Sharing: Two-way Street?

¶5. (C) While many of Jallow's initial concerns and complaints about GOK apathy probably have merit, it's also true that part of the problem may be a lack of trust between the GOK and the ICTR generally. Confiding in Legatt, the CID investigator assigned full-time to the Kabuga case has expressed reciprocal complaints about ICTR investigators not sharing the information that would give the Kenyan investigation some direction.

Comment

¶6. (C) The good news is that the GOK seems to be taking the Kabuga case more seriously. Acting Foreign Minister Wetengula's engagement is especially welcome. But time will tell if the Kenyan Police are serious about doing more to apprehend Kabuga. And if persistent rumors and indications of high-level complicity in protecting Kabuga are true, we may not see any real change in the thus-far lackluster GOK approach to this case. Another key ingredient will be building trust and cooperation between the ICTR and the GOK, without which any investigation will go nowhere. We may be able to help maintain the fragile momentum established by the Jallow visit. Mission Legatt will be following up to see if U.S. participation in the new task force would be feasible and desirable.

Press Statement

¶7. (U) Text of the joint press statement issued on September 27 follows below:

The Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) Hassan Bubacar Jallow, Under Secretary General of the United Nations, and representatives of the undersigned diplomatic missions in Kenya today met with Honorable Martha Karua, Minister of Justice, and Honorable Moses Wetangula, Assistant Minister of Foreign Affairs. Discussions focused on the urgent matter of apprehending Felicien Kabuga. Mr. Kabuga is sought in connection with serious accusations related to the 1994 genocide in Rwanda in which more than

800,000 people were killed. The ICTR has been tracking Mr. Kabuga for several years and believes he is a regular visitor to Kenya. Mr. Kabuga has been under indictment by the ICTR since 1997.

Under Secretary General Jallow and supporting diplomatic missions appreciate Kenya's commitment to pursue all available leads in this case, including through the investigation of suspected associates of Mr. Kabuga; investigation and, where appropriate, seizure of assets and provision of any records relating to the suspect's movements into and out of Kenya. We are hopeful that these efforts will soon bear fruit with the apprehension and prosecution of Mr. Kabuga before the ICTR.

Under Secretary General Hassan Bubacar Jallow and the diplomatic missions of Canada, European Union members represented in Kenya (Austria, Belgium, Cyprus, the Czech Republic, Denmark, the European Commission Delegation, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and the United Kingdom), Norway, Rwanda, Switzerland and the United States of America.
RANNEBERGER